
print name

INSTRUCTIONS:

1. The Unit Two Exam must be completed within the allocated time (*i.e.*, 11:30 AM - 12:45 PM). It is a closed book, solo exam.
2. **Please read carefully.** Sentence structure influences the meanings of words. **Recall the material difference between e.g. (*for example*) and i.e. (*that is*).**
3. As each student finishes this exam, that student will exchange the student's answer sheet for an answer key and leave the exam room until after the end of the exam (*i.e.*, 12:45 PM, *unless all students finish earlier, which is likely*).
4. Grades will be posted to BlackBoard no later than 5:00 PM Wednesday, March 9. An email notice of the posting will be sent.
5. **The Unit Two Exam is worth 20% of the course grade.**
This exam has 35 questions graded as if there are 33.
Harmless errors are far more likely than non-harmless errors in this test design.
Based on a statistical analysis of all students' answers, the instructor unilaterally may alter the grading of specific exam questions for all similarly situated students.
Any student may appeal the grading of these exam questions. However, only if a student successfully appeals the ambiguity of **AT LEAST THREE** questions on this exam will *that* student's exam grade change by the number of successful appeals in excess of two questions.
An appeal only affects the exam grade of the student who has made that appeal.
6. **All appeals** of this exam's questions must be:
[6A] typed; [6B] signed by the student in three ways, typed name, handwritten signature, and typed social security number; [6C] in sequence, list, immediately following the signature, each of the questions, by number, being appealed; [6D] after the [6C] list, argue each question, one at a time; [6E] at the beginning of the argument of each question's appeal, identify two or more reasonable meanings that the question could have had; [6F] argue why one or more of the identified reasonable meanings is *as* appropriate or is *more* appropriate than the meaning used for the answer key answer; and [6G] *personally handed to the instructor*
no later than 11:31 AM, Thursday, March 10.

QUESTIONS:

1. **T F** The common law of today uses the objective theory of contracts. Both the Mirror Image Rule
(*i.e., the offer **and** the acceptance must match*) **and** the Plain Meaning Rule
(*i.e., words in contracts **never** take on special meanings*) are examples of the objective theory of contracts.
2. **T F** All of the elements of a contract are agreement, capacity, consideration, genuineness of assent, form, **and** legal subject matter.
3. **T F** Contracts are either express
(*i.e., words: oral **or** written*) **or** implied
(*i.e., acts, words, **and/or** circumstances*). Regardless of whether a contract is express **or** implied, **never** can silence serve as acceptance.
4. **T F** If a party to a contract does **not** have an adequate remedy at law, then that party may obtain a remedy in a court of equity. Often, if a contract fails to form for want of consideration, then the complaint in the court of equity may state the cause of action of *quasi* contract **or** may state the cause of action for promissory estoppel.
5. **T F** A voidable contract is void until affirmed by the protected party.
6. **T F** A contract must have an agreement (*i.e., offer **and** acceptance*). An agreement that forms a contract can **not** exist if a business runs an advertisement, a salesperson makes an expression of opinion (*e.g., puffing*), **or** the parties agree to agree. However, a mere agreement to agree can support the tort cause of action for wrongful interference with business relations.

7. **T F** The Statute of Frauds requires a written memorandum of sufficient definiteness that the court can enforce the parties' objective agreement. To satisfy this requirement the material terms
*(i.e., parties, time, capacity, **and** subject matter)* of the contract must be in a writing signed
(i.e., any mark with the current intent to authenticate the document) by all parties to the contract.
8. **T F** Because of the Mail Box Rule, a counter offer always is a revocation; **unless** the contract is an option contract.
9. **T F** Every common law contract must be supported by an exchange of consideration. Accordingly, a common law contract is **not** formed if any of the parties' purported consideration is a preexisting duty **or** is a consideration currently used in a past contract.
10. **T F** Consideration is **not** necessarily equal to value. The consideration of common law contracts serves as objective evidence of one's objective intent to be bound. Thus, the judicial analysis of consideration of common law contracts focuses upon whether the consideration is legally sufficient, rather than focusing upon whether the contract reflects a fair price.
11. **T F** Agreement on quantity is critical for all contracts. Contracts that use the output ability of the seller **or** use the purchasing requirements of buyer are **not** sufficiently definite, fail to reach an agreement, **and** are **not** enforceable.

12. T F An enforceable liquidated damages clause that is triggered by its condition precedent creates both a liquidated debt **and** a full release.
13. T F The elements of the equitable remedy of promissory estoppel are the promisor makes clear **and** definite promise reasonably expecting the promisee's definite **and** substantial justifiable reliance, the promisee performs the promised performance, **and** failure to enforce the promise would result in **injustice**.
14. T F A minor can lack the capacity to form a contract while simultaneously possessing the capacity to commit a related tort (*e.g., fraud*). An intoxicated person (*i.e., whether voluntary or involuntary*) creates voidable contracts. A person whose insanity is **not** adjudicated **and** is reasonably knowable by the other party creates voidable contracts. while a person whose insanity is adjudicated creates a void "contract".
15. T F Generically, insurance contracts (*i.e., the allocation of existing risk in an effort to reduce the average total cost of that risk*) are legal subject matter; **but**, generically, gambling contracts (*i.e., creation of new risk and the allocation of that risk by chance*) are **not** legal subject matter.
16. T F The degree of a USA State's hostility to a covenant **not** to compete that claims an **unreasonable** time **or** claims an **unreasonable** area can be seen in its judicial response (*i.e., reform the covenant and enforce it within lawful limits versus sever the covenant from the surrounding transaction and refuse to enforce the covenant versus void the entire transaction and place the parties in equity*). Nebraska's hostility is at the void end of that continuum **and** Nebraska requires the covenant itself to be a contract.

17. T F An exculpatory clause in a contract between a merchant **and** a consumer always is **unconscionable**.
18. T F The material fact required for a unilateral mistake is bigger than the material fact required for a mutual mistake.
19. T F A common law fraud exists if the defendant knowingly **misrepresents** a material fact thereby inducing the plaintiff's justifiable reliance **and** injury.
20. T F Because law in the USA favors the objective over the subjective, the law is far more likely to see **unlawful** physical duress than **unlawful** emotional duress. Because law in the USA uses a separation of powers that has as its primary separation the superiority of the Individual over government, the law is far more likely to see lawful privileged economic duress than **unlawful** predatory economic duress.
21. T F A signature is any mark with the current intent to authenticate the document.
22. T F If a contract is express, then the contract satisfies the Statute of Frauds.
23. T F If a contract is express, then the Parol Evidence Rule governs the contract.

24. T F A contract that contains an incorporation by reference clause has a clause that is **also** known as a merger clause, an integration clause, **and/or** an incorporation clause.
25. T F All third parties that are vested have privity: regardless of whether that third party was an incidental **or** an intended third party, **and** regardless of whether that third party was a donee **or** a creditor third party.
26. T F Both the old common law **and** the new common law governing the assignment of rights **and** the delegation of duties refuse to enforce assignments **or** delegations that violate the parties' reasonable expectations.
27. T F An enforceable delegation of duties creates a surety, while an enforceable novation creates a guarantee.
28. T F A condition precedent creates a duty. A condition concurrent is a simultaneous duty. A condition subsequent discharges a duty.
29. T F If a party owing a duty to perform tenders performance (*i.e., ready, willing, **and** able to perform*) when due, then that duty to perform is discharged if the party owed the duty rejects the tender. Additionally, the tendering party will have **no** liability for damages springing from the **non**-performance of that duty.

30. T F Complete performance
(*i.e., an anticipatory breach **not** repudiated*)
discharges the duty to perform **and** there are **no** damages.
Substantial performance
discharges the duty to perform,
and creates liability for contract damages from the breach.
Material breach
(*e.g., substantial performance of an express condition*)
does **not** discharge the duty to perform
and creates liability for contract damages from the breach.
31. T F If
the parties to an executed contract
wish to discharge that contract by agreement,
then
the parties have the option of using
rescission (*i.e., either mutual **or** unilateral*),
a substitute agreement, **or**
an accord **and** satisfaction.
32. T F Because the contracting parties are free,
the law will **not** save the parties from their own choices.
However,
if
no reasonable person would have agreed to the contract
as it must be read when the future arrives,
then
the court will excuse **non**-performance of a contract
rendered impracticable by a contingency **not** foreseen by the parties
(*e.g., a three fold increase in market price*)
or
the court will discharge a contract
rendered objectively impossible
(*e.g., a ten fold increase in market price*).

33. T F The remedy for breach of contract is money damages, **and** the generic measure of these money damages is the loss of the benefit of the bargain. If, however, money damages will **not** cause an **injustice** (*e.g., unjust enrichment*), then a court of equity might use alternative remedies, such as, an injunction, a unilateral rescission, restitution, **or** specific performance.
34. T F The defendant breaching party has a duty to mitigate damages. To balance this, the complaint filed by the plaintiff **non**-breaching party must make an election of remedies. For example, the plaintiff **non**-breaching party must request the remedy of nominal damages **or** must request the remedy of punitive damages. However, the plaintiff is **not** required to choose between compensatory damages **and** consequential damages. The rule established by *Hadley v. Baxendale* classifies foreseen damages as compensatory damages.
35. T F Technological change often changes the reasonable expectations of the People, which in turn prompts the law to change. For example, web based commerce prompted the law to be more welcoming to adhesion contracts between merchants **and** consumers.